

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

FILE:

EAC 05 109 53488

Office: VERMONT SERVICE CENTER

Date: JUL 21 2006

IN RE:

Petitioner:

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish her residence with, and good faith marriage to her U.S. citizen husband.

On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(v) *Good moral character*. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of Ghana who entered the United States on April 6, 2003 as a nonimmigrant visitor (B-1). On December 15, 2004, the petitioner married [REDACTED] a U.S. citizen, in Maryland. On March 3, 2005, the petitioner filed this Form I-360. On March 15, 2005, the director issued a notice requesting evidence of the petitioner's good faith marriage to Mr. [REDACTED] and counsel submitted additional evidence on May 5, 2005. On June 17, 2005, the director requested further evidence of, *inter alia*, the petitioner's good faith marriage to and residence with Mr. [REDACTED]. Counsel requested and was granted additional time to respond and submitted further evidence on October 21, 2005. On December 8, 2005, the director denied the petition because the record failed to establish the petitioner's good faith marriage to and residence with Mr. [REDACTED]. The petitioner, through counsel, timely appealed.

On appeal, counsel asserts that there was a misunderstanding regarding the former couple's joint residential address and that the additional testimonial evidence submitted on appeal demonstrates the petitioner's residence with Mr. [REDACTED] and her good faith entry into marriage with him. We concur with the director's conclusion and find that counsel's claims and the evidence submitted on appeal do not overcome the grounds for denial. Beyond the director's decision, the present record also fails to establish the petitioner's good moral character. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Joint Residence

As evidence of her residence with Mr. [REDACTED] the petitioner initially submitted her undated affidavit in which she states that Mr. [REDACTED] moved in with her in September 2004 and that they lived together in a room she was subletting in apartment number 23 at [REDACTED] in Gaithersburg, Maryland. The petitioner also submitted copies of Mr. [REDACTED] driver's license and documents mailed to Mr. [REDACTED] at this address. In response to the director's June 17, 2005 notice, the petitioner submitted an affidavit from her friend, [REDACTED] dated October 6, 2005, in which Ms. [REDACTED] states that she subleased her apartment to the petitioner and two other people and that Mr. [REDACTED] later joined the petitioner. Ms. [REDACTED] states the address of her apartment as "[REDACTED], Gaithersburg, Maryland." The petitioner also submitted a transcript of voicemail messages left by Mr. [REDACTED], in which Mr. [REDACTED] refers to some of his belongings that he wants the petitioner to return. We concur with the director's determination that the evidence submitted below does not establish that the petitioner resided with Mr. [REDACTED] and we do not repeat her discussion here.

On appeal, the petitioner submits a second affidavit from Ms. [REDACTED] dated March 21, 2006. Ms. [REDACTED] states that she and her sister leased an apartment at [REDACTED] and that any reference to [REDACTED] must have been a typographical error. Ms. [REDACTED] confirms that she subleased one of the bedrooms to the petitioner and that the petitioner later asked if Mr. [REDACTED] could move in with her. Ms. [REDACTED] states that she gave the petitioner

her permission and that on one occasion she observed that the former couple had purchased furniture together for the living room. Ms. [REDACTED] does not state the dates of these events or provide any further details regarding the former couple's alleged joint residence.

On appeal, the petitioner also submits a partial copy of a lease for Ms. [REDACTED] and her sister dated February 6, 2004 for apartment number 23 at [REDACTED] in Gaithersburg, Maryland. The evidence submitted on appeal shows that Ms. [REDACTED] leased apartment number [REDACTED] at the [REDACTED] address, but the record does not corroborate the petitioner's claim that she lived at that address with Mr. [REDACTED]. On appeal, counsel asserts that Mr. [REDACTED] references to getting his belongings back from the petitioner in the transcripts of his voicemail messages attests to the former couple's joint residence, but the transcript contains no mention of the former couple's allegedly joint residential address, the time period that they purportedly lived together or any other detailed statements regarding their alleged joint residence.

In her affidavit submitted on appeal, the petitioner does not discuss her purported residence with Mr. [REDACTED] and the petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record fails to establish that the petitioner resided with Mr. [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into the Marriage

The petitioner initially submitted no evidence of her good faith marriage to Mr. [REDACTED]. In response to the director's March 15, 2005 notice, the petitioner submitted the transcript of Mr. [REDACTED]'s voicemail messages and her own affidavit in which she states that she met Mr. [REDACTED] through a dating service in March 2004; that they went to a restaurant and a movie on their first date, that Mr. [REDACTED] proposed in August 2004; that she accepted, he moved in with her in September 2004 and they were married on December 15, 2004. Apart from the reference to wanting his belongings back, Mr. [REDACTED]'s messages contain no probative details about the former couple's marriage or life together. The petitioner also submitted an affidavit from Ms. [REDACTED] dated April 8, 2005, in which she states that she went to many social functions with the petitioner and Mr. [REDACTED] before they were married and that she was a witness at their wedding. Ms. [REDACTED] provides no detailed description of any social events she attended with the petitioner and Mr. [REDACTED] and she does not further discuss the former couple's marital relationship or the petitioner's good faith in marrying Mr. [REDACTED] as observed by her.

In response to the director's June 17, 2005 notice, the petitioner submitted a second affidavit dated October 6, 2005, in which she explains that she married Mr. [REDACTED] with the intention of developing a life with him, but that because she never received employment authorization while they were together, they did not accumulate "the type of joint documents that one would usually expect in a marriage."

We concur with the director's determination that the evidence submitted below does not establish the petitioner's good faith marriage to Mr. [REDACTED] and we do not repeat the director's discussion here.

On appeal, the petitioner submits additional affidavits from herself and Ms. [REDACTED]. In her March 21, 2006 affidavit, the petitioner states that she married Mr. [REDACTED] for love and that when she met him he was kind hearted, understanding and interested in learning about her culture. She explains that they would do everything together, that they would go out to eat and go to the movies every weekend, that Mr. [REDACTED] would try her cooking and that they "discussed the future and what are [sic] dreams and goals were." In her March 21, 2006 affidavit, Ms. [REDACTED] states that she knew the petitioner and Mr. [REDACTED] when they were dating and that Mr. [REDACTED] would go to Ghanaian functions with the petitioner.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Although she states that her lack of employment authorization prevented the former couple from obtaining joint documents, she does not submit, for example, further testimonial evidence of her good faith entry into marriage with Mr. [REDACTED]. While she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record fails to establish that the petitioner married Mr. [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the director's decision, the present record does not establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The petitioner submitted no evidence of her good moral character. Citizenship and Immigration Services (CIS) records show that the petitioner was convicted of misdemeanor larceny in North Carolina on January 23, 2004. The petitioner has submitted no documentation of her conviction record or other evidence to establish her good moral character pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vii), 204.2(c)(2)(v).

The present record does not demonstrate that the petitioner resided with Mr. [REDACTED] that she entered into their marriage in good faith or that she is a person of good moral character and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.